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EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/763,230

Applicant(s)

ELLA ET AL.

Examiner

Danton DeMille

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 168-314 is/are pending in the application.
- 4a) Of the above claim(s) 295-314 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 168-294 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8-9-04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description of the invention.

4. Claims 189, 219 recite that the at least one additional mode of treatment is air-brush makeup application. Claim 168 recites that the additional mode of treatment is integrated with the spout. As understood the air-brush makeup applicator 200 is a separate element from the vacuum spout. It doesn't appear to be integrated with the spout as claimed. The same would apply to hair blower 160, hair curler 170 and nail dryer 180.

5. Claim 233 recites the vacuum source is a vacuum "cleanser"(assumed "cleaner") however, it is not clear how the embodiment of a conventional vacuum cleaner with the claimed treatment spout can provide the controller with the automatically selecting a predetermined schedule and sequence claimed. A conventional vacuum cleaner would not appear to have a controller that would interface with the different treatment systems and the user to be able to select different modes of treatment.

Drawings

6. The drawings are objected to under 37 CFR 1.83(a) because they fail to clearly show details as described in the specification. The scanned in copies of applicant's drawing do not differentiate slight differences in shading and therefore result in drawings with solid shading, blocking out any details. For example, figures 16A-B, 17A-B appear to be photographs and therefore no details at all show. Only silhouettes resulted. Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

7. Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

8. The wavy structure 28 of roller 22 in figure 1G cannot be viewed. The right portion of figures 1H-I is solid black and therefore no distinction can be made between elements 29, 32, 16 and 9. These lead lines are all pointing to the same solid black shape. In figure 5A-B the details of coil 62 cannot be clearly ascertained. Electrodes 27 cannot be clearly viewed in figures 6B-C. The diodes 47 in figures 7-8 cannot be distinguished clearly from the rest of the spout housing. The vacuum outlet 72 and power and control outlet 74 appear to be the same black box on top of the power and control cable 32 in figure 13A. The figure in figure 13C is merely a big black box and therefore no details can be ascertained. All of the lead lines are pointing to the same big

black box. The laptop shaped storage compartment 220 of figures 21, 22A, 23A-B, 27, 28 and 29 is one large black box. No details within the box can be clearly ascertained. Therefore all of the lead lines are pointing to the same black box. In figures 23A and 29, the shading of mask 308 is such that the user's face cannot be clearly ascertained.

9. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Election/Restrictions

10. Applicant's election without traverse of Group I claims 168-294 in the reply filed on 03 November 2005 is acknowledged.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 168-294 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 83-129 of copending Application No. 10/600,836 in view of Zharov. Zharov teaches at least one spout, figure 4, that defines an inner chamber communicating with a vacuum source 24 and sources of radiation 1 for a second feature integrated with the spout. Zharov also teaches a controller for automatically controlling the application of the different treatments can be applied “sequentially or synchronically with the light radiation, which is set by the commutation unit” column 6, lines 12-13. It would have been obvious to one of ordinary skill in the art to modify programmable computerized device of the previous application ‘836 to apply the different treatments sequentially as taught by Zharov to complete the operational use of the device.

13. This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 112

14. Claim 187 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

15. It is not clear how claim 187 further limits the structure already recited in claim 168. The recited method of face and body cleaning moisturizing and massaging treatment could be carried out by the structure of claim 168 by merely adding a moisturizing cream to the skin before using the suction massage device. What structural limitation is applicant claiming to perform the recited function?

16. The same would apply to claim 188. The device of claim 168 could be used to massaging the lymphatic system by merely massaging a particular area of the body. What structural limitation is applicant attempting to claim?

17. The same would apply to claim 194. The device of claim 168 could be used “cupping” by merely massaging a the body with the cup shaped spout. What structural limitation is applicant attempting to claim?

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 168-169, 171, 172, 190, 194-207, 209, 212-213 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zharov in view of Howard.

20. Zharov teaches a treatment system comprising a spout, figure 4, in communication with a vacuum source 24 and a radiation source 1 integrated with the spout. Zharov also teaches a commutation unit and a control unit “which provides switching of the sources with different spectrum ranges and supplementary physiotherapeutic modules in accordance with a program given, for example, it can provide their separate or simultaneous operation” column 2, lines 44-51. Zharov also teaches continuous or pulsed magnetic field therapy “sequentially or synchronically with the light radiation, which is set by the commutation unit” column 6, lines 10-13. Zharov teaches the commutation unit in combination with the control unit provides a program to switch between different modes of operation separately, simultaneously, sequentially or synchronically. Other physiotherapeutic modules include ultrasonic, vacuum, magnetic, electric and other kinds of therapy, column 1, lines 63-65.

21. While Zharov appears silent with regard to a control panel for the user to communicate instructions to the controller such would have been an obvious provision. Howard exemplifies such a convention. It would have been obvious to one of ordinary skill in the art to modify Zharov to include a display and control panel as taught by Howard for the user to be able to input the parameters and display the different programs taught by Zharov.

22. Regarding claims 195-202, Zharov teaches using electromagnetic radiation therapy at a variety of different wavelengths from ultraviolet to radio, claim 1. It would have been obvious to one of ordinary skill in the art to include with the vacuum therapy one or more wave lengths

required for the desired treatment for a specific patient including far, medium and near infrared wave lengths.

23. Claim 170 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 169 above, and further in view of Osborne et al.

24. Howard already teaches a display panel and separate keyboard for input and display. An interactive display panel is an obvious conventional well known equivalent alternative means for doing the same thing. Osborne is cited to teach such a convention in the common graphical interactive display device 1664. It would have been obvious to one of ordinary skill in the art to further modify Zharov to use an interactive display panel as taught by Osborne as an obvious equivalent alternative computer interface.

25. Claims 173, 174, 175 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 168 above, and further in view of Palomo et al.

26. Palomo teaches improving the efficiency of a medical service provider comprising a local computer using a software application designed for inclusionary data entry, data retrieval and report generation accessing a relational database. The system includes being used for physical therapists applying physical therapy to the patient. The software normalizes the different styles and processes into a single standard that can be used to cross-consult or follow up different patients, last line of paragraph 76. Palomo teaches a system that inputs the data from the physical therapist and normalizes is so that it can be used for follow up therapy for different patients. Since the system is designed for treating many different patients there would inherently be a system to individually identify each patient this would comprehend the claimed identifiable by a user's ID. It would have been obvious to one of ordinary skill in the art to further modify

Zharov to include a system for managing many different patients as taught by Palomo so that the system could be used to treat many different patients.

27. Claim 176 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 168 above, and further in view of Carava.

28. Carava teaches a vacuum spout adapted for treating many different areas including the chin paragraph 29 line 19. It would have been obvious to one of ordinary skill in the art to further modify Zharov to include a spout dedicated to firm the lower chin as taught by Carava to massage any specific area as desired.

29. Claims 177, 178, 179 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 168 above, and further in view of Khouri.

30. Zharov teaches that the device can be used for the breasts. Khouri also teaches using a vacuum spout for the breast. It would have been obvious to one of ordinary skill in the art to further modify Zharov to use the spout for the breasts as taught by Khouri to treat any specific area desired.

31. Claims 180, 181 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips in view of Zharov and Howard.

32. Phillips teaches a treatment device including a spout 11 in communication with a vacuum source and an additional feature vibrator 7. Phillips also teaches that the device can also be connected to a blower for drying the hair or other parts of the body, column 1, lines 24-30. Other parts of the body include nails, as such the device is also capable of drying nails. While Phillips doesn't teach a power and control console for automatic operation of the device. Such would have been obvious to automate the operation of such a device to provide a specific method of use

and limit the time of operation. Zharov teaches a vacuum spout with an additional feature and teaches a power controller to control the operation of the device. It would have been obvious to one of ordinary skill in the art to modify Phillips to include a power and control unit as taught by Zharov in order to provide an automatic control for the operation and provide a control panel as taught by Howard to provide a means of inputting the operation commands.

33. Claims 182-184 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 168 and further in view of Kang.

34. Kang teaches a treatment system that includes suction cleaning in the last two lines of paragraph 53 and includes supplying oxygen to the skin using ozone, paragraph 99. It would have been obvious to one of ordinary skill in the art to further modify Zharov to supply oxygen to the spout using ozone as taught by Kang to provide the added benefit of purifying the skin. It is noted that conventional peeling agents added to the skin prior to purification oxygen treatment enhance the skins absorption of oxygen and is well known to the artisan of ordinary skill.

35. Claim 185 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ball in view of Zharov, Howard and Lynch.

36. Ball teaches a treatment device comprising a spout 14 connected to a vacuum source. The spout 14 is also optionally connected to a hair dryer 46, column 3, lines 34-47. This would appear to comprehend at least one additional feature integrated with the spout. While Ball may not teach the power and control console as claimed Zharov teaches such and Howard teaches the control panel for communicating with the controller. Lynch teaches the optional use of including steam with the application of hot air. It would have been obvious to one of ordinary skill in the art to modify Ball to use a power and control console as taught by Zharov to control the

operation of the device and a control panel as taught by Howard to input the commands into the controller and use steam as taught by Lynch to provide a moist heat massage.

37. **Claims 168 and 186 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shadduck in view of Howard.** Shadduck teaches a spout 8A connected to a vacuum source 80. Shadduck also teaches an additional feature integrated with the spout comprising sandblasting peeling 30, 40. Shadduck also teaches a power and control console 25 for controlling the operation of the device. Shadduck also teaches many different steps in the operation of the device and the controller can automatically sequence operational steps, column 11, lines 38-40. While Shadduck may not teach a control panel for inputting the commands Howard teaches such. It would have been obvious to one of ordinary skill in the art to modify Shadduck to use a control panel to input commands as taught by Howard to complete the missing details from Shadduck to control the operation of the device.

38. **Claims 168, 187, 188 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spelio in view of Zharov and Howard.**

39. Spelio teaches a system including a spout 10 in communication with a vacuum source for providing a lymphatic massage treatment (column 2 lines 5-30) and a face and body cleaning moisturizing and massaging treatment (column 2, lines 37-47). While Spelio doesn't teach power and control console Zharov teaches this and Howard teaches the display. It would have been obvious to one of ordinary skill in the art to modify Spelio to include additional therapy elements using a controller as taught by Zharov and using a display panel as taught by Howard to enable the user to input and see the operation of the device.

40. Claims 189 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zharov in view of Howard as applied to claim 168 above and further in view of Ray et al.

41. It would have been obvious to one of ordinary skill in the art to further modify Zharov to include an air brush element for applying makeup as taught by Ray to add this conventional mode to the device of Zharov.

42. Claims 191, 193 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 168 above, and further in view of Malak.

43. Malak teaches acoustic/ultrasound-optical therapy that includes hair removal, claim 16. It would have been obvious to one of ordinary skill in the art to further modify Zharov to include the mode of hair removal as taught by Malak including ultrasonic and photoepilation as an added optional therapy.

44. Claim 192 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 168 above, and further in view of Yassin.

45. Yassin teaches the convention of hair removal in combination with a vacuum spout. It would have been obvious to one of ordinary skill in the art to further modify Zharov to include mechanical hair removal as taught by Yassin to provide the added mode of hair removal.

46. Claim 208 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 168 above, and further in view of Perler.

47. Perler teaches using a peltier thermoelectric module which is also called a “cooling diode”. It would have been obvious to one of ordinary skill in the art to further modify Zharov to include a cooling diode as taught by Perler to provide the added benefit of using a cooling diode to cool the skin.

48. Claims 210 and 211 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 168 above, and further in view of Jacobs.

49. Jacobs teaches a vacuum spout that includes rollers and ultrasound emitters. It would have been obvious to one of ordinary skill in the art to further modify Zharov to include rollers with the spout as taught by Jacobs to further enhance the therapy by better massaging the skin.

50. Claims 168, 212-215, 217, 218, 220-245, 267-272, 278-283 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang in view of Zharov.

51. Chang teaches a cabinet housing a plurality of different skin treatment devices including a vacuum cleaning device 5 with a vacuum head 51. Chang also teaches a power and control console with a display control panel on the front of the cabinet. Zharov teaches a vacuum device that includes phototherapy along with other physiotherapeutic devices. Zharov also teaches a power and control unit that automates the operation of the devices. Chang teaches the convention of providing a plurality of different cosmetic and beauty aides into one compact cabinet for portability. There appears to be no unobviousness to include any conventional cosmetic and beauty aide within the cabinet as desired or required. It would have been obvious to one of ordinary skill in the art to modify Chang to include the Zharov device as another one of the cosmetic and beauty aides into the compact portable cabinet.

52. Regarding claims 214, 215, it would have been obvious to one of ordinary skill in the art to further modify Chang to use any convention cosmetic or beauty aide device such as an electric hair setter or rotating hair brush.

53. Claim 216 is rejected under 35 U.S.C. 103(a) as being unpatentable over the as applied to claim 213 above, and further in view of Shadduck.

54. It would have been obvious to one of ordinary skill in the art to further modify Chang to include a sandblasting peeler as taught by Shaddock to provide another conventional cosmetic aide device within the cabinet.

55. Claim 219 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 213 above and further in view of Ray et al.

56. It would have been obvious to one of ordinary skill in the art to further modify Chang to include an air brush element for applying makeup as taught by Ray to add this conventional mode to the device of Chang.

57. Claims 246-266, 284-294 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 213 above, and further in view of Pinzone et al.

58. Pinzone teaches another portable vanity case with a lid and pivoting side mirrors and magnifying mirrors. It would have been obvious to one of ordinary skill in the art to further modify Chang to include pivoting side mirrors, magnifying mirrors as taught by Pinzone to provide many different degrees of flexibility in view the head of the user. There is no unobviousness to the specific location of the mirrors or the control panel in relation to each other.

59. Claims 268-277 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang in view of Zharov as applied to claim 168 above, and further in view of Skarky.

60. While Chang teaches a portable case for providing a means for support a plurality of cosmetic devices there is no unobviousness to make the case a permanent object within a room. Cosmetic tables built into a room are not new as exemplified by Skarky. It would have been obvious to one of ordinary skill in the art to further modify Chang to make the cabinet part of a

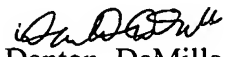
permanent structure within a room as taught by Skarky to provide a more permanent alternative cabinet. Regarding claims 269-272, there is no unobviousness to the exact type of room. The cabinet can be placed in any room desired.

61. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-Th from 8:30 to 6:00. The examiner can also be reached on alternate Fridays.

62. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

63. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

21 January 2006


Danton DeMille
Primary Examiner
Art Unit 3764